



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0084]

RIN 1625-AA87

### Security Zone; Lower Mississippi River, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary security zone for all navigable waters within 400 yards of the Left Descending Bank (LDB) of the Lower Mississippi River (LMR) MM 94.4 and MM 95.1, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to provide security and protection for visiting personnel during the events related to the Mardi Gras Celebrations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

**DATES:** This rule is effective from 6 p.m. on February 25, 2022, through 11:59 p.m. on March 1, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0084 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander, William A. Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2246, email [William.A.Stewart@uscg.mil](mailto:William.A.Stewart@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
TFR	Temporary Final Rule
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. We must establish this security zone by February 25, 2022 in order to provide proper security for these visiting personnel, and we do not have sufficient time to request and respond to comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the ***Federal Register***. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide adequate security to protect the public.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New Orleans (COTP) has determined that the increased number of personnel anticipated to be visiting the city during the Mardi Gras Celebration requires certain security measures to ensure that the

persons and property are kept secure during the events. The Coast Guard determined that a temporary security zone is needed for this and related events that will be taking place adjacent to a portion of Lower Mississippi River (LMR).

#### **IV. Discussion of the Rule**

This rule establishes a security zone from 6 p.m. on February 25, 2022 through 11:59 p.m. on March 1, 2022. The security zone will cover all navigable waters within 400 yards of the Left Descending Bank (LDB) of the LMR from MM 94.4 and MM 95.1, Above Head of Passes (AHP), New Orleans, LA. This zone is necessary in order to provide to provide waterside security for the protection of visitors attending the events related to the Mardi Gras Celebrations. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at 504-365-2545.

Persons and vessels permitted to enter this security zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the security zone. Vessel traffic will be able to safely transit around this security zone which would impact a small designated area of the Mississippi River near New Orleans, LA for a limited number of days and will not overly impede vessel traffic during the period in effect. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a security zone to protect the public in a small designated area of the Mississippi River near New Orleans, LA for a limited number of days. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0084 to read as follows:

**§ 165.T08-0084 Security Zone; Mississippi River, New Orleans, LA**

(a) *Location.* The following area is a security zone: All navigable waters of Mississippi River, New Orleans, LA within 400 yards of the Left Descending Bank (LDB) of the Lower Mississippi River (LMR) between Mile Marker (MM) 94.4 and MM 95.1, Above Head of Passes (AHP), New Orleans, Louisiana.

(b) *Definitions.* As used in this section, designated representative means a designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(c) *Regulations.* (1) In accordance with the general regulations in §165.33 of this part, entry into or remaining within this regulated area is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative.

(2) Vessel requiring entry into this regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at 504-365-2545.

(3) Persons and vessels permitted to enter this security zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the

designated representative.

(d) *Enforcement period.* This section will be enforced 6 p.m. on February 25, 2022, through 11:59 p.m. on March 1, 2022.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: February 18, 2022

W. E. WATSON,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Sector New Orleans

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